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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/698,640	10/27/2000	Jeffrey S. Marks	36207.0100	4914

7590 08/24/2005  
Snell & Wilmer LLP  
One Arizona Center  
400 E. Van Buren  
Phoenix, AZ 85004-2202

EXAMINER
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VINCENT, DAVID ROBERT

ART UNIT	PAPER NUMBER
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3628

DATE MAILED: 08/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

09/698,640

**Applicant(s)**

MARKS, JEFFREY S.

**Examiner**

David R. Vincent

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 04 May 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 1/29/01.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

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***Response to Amendment***

1. An RCE was filed May 4, 2005 and a non-final rejection follows. Applicant's arguments with respect to claims 1-4 have been considered but are moot in view of the new ground(s) of rejection.

***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 4 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

For example, "ghost pools" are not clearly understood and as such the metes and bonds of ghost pools cannot be easily determined. The first occurrence of the term occurs on page 3 the applicant's specification where the applicant states "In accordance with yet another embodiment of the present invention, ghost pools are used to select preferred merchants for particular auctions." Claim 4 specifies merchants bid on ghost pools.

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Also in claim 4, the phrase "hypothetical customers" is used. What exactly are "hypothetical customers", customers that do not exist? How are non-existent customers grouped into ghost pools? The term ghost imply one can't see the customers because they don't exist? Is this the same thing as specifying simulating auctions or analyzing historical data?

3. Due to the indefiniteness of the limitation as explained in the 35 USC § 112 rejection, the following rejections are based upon the broadest interpretation of the claims.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly

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or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 1-5 are rejected under 35 U.S.C. 102(e) as being anticipated by Rackson (US 6,415,270).

Rackson discloses a computer implemented method for an on-line auction (Figs. 2-13, especially Figs. 2-3, 10-11, and respective disclosure; col. 13, line 1) of the type wherein **one** customer (bidder, 20, or 22, Figs. 2-3, 10-11; bidders, Figs. 5-9) may purchase a product supplied by **one** merchant (Figs. 2-14 and respective disclosure) said method comprising the steps of:

acquiring, over a network (16, Fig. 2, or Figs. 3, 10-11) customer information from said **one** customer (50, Fig. 10; or 32, Fig. 11; 600, Fig. 13; bidder's name, contact data, port address, email ID or other indicia, Fig. 14; col. 14, lines 30-49; collecting market data, col. 23, lines 18-29) said customer information including a Program Term selected from one Program Term associated with said product (features of products such as price, manufacturer, condition, Fig. 12; col. 24, lines 5-67; bidder parameters, 600, Fig. 13; parameters of item, 104, Fig.

4)

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automatically grouping said one customer into one pool (each separate auction Nos. 1-3 or 1-5 comprises a pool of bidders bidding on an item with the same features, indicia, or characteristics, grouping bidders into separate auctions by duplication if necessary, Figs. 6, 8-9; grouping French bidders or bidders using the same currency into a pool, col. 15, lines 23-38; Tied bidders are grouped into one or more pools of smaller groups of bidders automatically, see disclosure of tied bidders, cols. 1-26, especially col. 21, lines 50-64; col. 13, lines 8-35; and using priority schemes to break ties, col. 13, lines 8-19; ranking bidders, col. 21, lines 55-63; or allowing one or more bidders to bid, optimal or highest bidder with best credit rating or bidder who will pay a higher real price minus commissions credit card fees etc., col. 16, lines 3-24) in accordance with said selected Preferred Program Term wherein said Preferred Program Term comprises indicia associated with the product (labels on product such as manufacturer name, weight, features of products such as price, manufacturer, condition, Fig. 12; col. 24, lines 5-67; bidder parameters, 600, Fig. 13; parameters of item, 104, Fig. 4);

receiving, over said network bids from said one merchant in connection with the online auction of said product (bids from merchants can be reverse auctioning, col. 3, lines 33-40; col.

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22, lines 49-67; Dutch auctions, col. 11, lines 24-32; col. 21, lines 26-63);

comparing said bids from said merchants to select a preferred bid (optimal bids, col. 6, lines 56-62) from a preferred merchant (col. 15, lines 22-52; cols. 1-26, especially col. 21, lines 50-64; col. 13, lines 8-35; col. 13, lines 8-19; or highest bidder with a higher real price minus commissions credit card fees etc., col. 16, lines 3-24);

notifying over said network said preferred merchant of said preferred bid (154, Fig. 4; 654, Fig. 13; cols. 1-26), as specified in claim 1;

wherein said grouping step includes grouping said customers via characteristic pooling in accordance with a Program Term associated with a characteristic of said customers (**each separate auction Nos. 1-3 or 1-5 comprises a pool of bidders bidding on an item with the same features, indicia, or characteristics, grouping bidders into separate auctions by duplication if necessary, Figs. 6, 8-9; grouping French bidders or bidders using the same currency into a pool, col. 15, lines 23-38; using characteristics of bidders in breaking ties when Tied bidders bidding on an item with the same features/indicia are grouped into one or more pools of bidders automatically, see disclosure of tied bidders, cols. 1-26, especially col. 21,**

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lines 50-64; col. 13, lines 8-35; and using priority schemes to break ties, col. 13, lines 8-67; ranking bidders, col. 21, lines 55-63; or allowing one or more bidders to bid, optimal or highest bidder with best credit rating or bidder who will pay a higher real price minus commissions credit card fees etc., col. 16, lines 3-24), as specified in claim 2;

wherein said grouping step includes grouping said customers via commitment (registering with an auction site is a level of commitment, bidding, selecting a price level, using a specific credit card, having a credit rating are all considered levels of commitment, cols. 1-26) pooling in accordance with a Program Term associated with the customers level of commitment (**each separate auction Nos. 1-3 or 1-5 comprises a pool of bidders bidding on an item with the same features, indicia, or characteristics, grouping bidders into separate auctions by duplication if necessary, Figs. 6, 8-9; grouping French bidders or bidders using the same currency into a pool, col. 15, lines 23-38; Tied bidders bidding on an item with the same features/indicia are grouped into one or more pools automatically, see disclosure of tied bidders, cols. 1-26, especially col. 21, lines 50-64; col. 13, lines 8-35; and using priority schemes to break ties, col. 13, lines 8-19; ranking bidders, col. 21, lines 55-63; or allowing one or more bidders**



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to bid, optimal or highest bidder with best credit rating or bidder who will pay a higher real price minus commissions credit card fees etc., col. 16, lines 3-24), as specified in claim 3;

hypothetical customs are grouped into ghost pools and wherein said merchants bid on said ghost pools to obtain the right to provide a previously agreed upon number of said customers with said product (simulating auctions or analyzing historical data, determining optimal auction parameters, 112, Fig. 4; determining which remote auction service to use, 124, Fig. 4; using simulation or history, col. 19, lines 4-21; or col. 24, lines 59-67) , as specified in claim 4;

wherein said grouping step includes grouping said customers into pools in accordance with the customers predefined ranking (grouping French bidders or bidders using the same currency into a pool, col. 15, lines 23-38; Tied bidders bidding on an item with the same features/indicia are grouped into one or more pools automatically, see disclosure of tied bidders, cols. 1-26, especially col. 21, lines 50-64; col. 13, lines 8-35; and using priority schemes to break ties, col. 13, lines 8-19; **ranking bidders**, col. 21, lines 55-63; or allowing one or more bidders to bid, optimal or highest bidder with best credit rating or bidder who will pay a higher real price minus commissions credit card fees etc., col. 16, lines 3-24) of two or more Program

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Terms (selecting name of item, brand, manufacturer, price, item for auction features, e.g., description, quantity, color, size, name brand, etc. see e.g., features of products such as price, manufacturer, condition, Fig. 12; col. 24, lines 5-67; bidder parameters, 600, Fig. 13; parameters of item, 104, Fig. 4), as specified in claim 5.

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

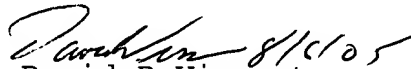
**Brown (US 6,167,386)** discloses grouping bidders into a pool (being part of a bidding group, abstract).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David R. Vincent whose telephone number is 571 272 3080. The examiner can normally be reached on M-TH.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sam Sough can be reached on 571 272 6799. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
David R Vincent  
Primary Examiner  
Art Unit 3628

August 6, 2005